

# SENATE BILL 599

P2

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CF HB 585

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By: **Senator Conway**

Introduced and read first time: February 1, 2013

Assigned to: Education, Health, and Environmental Affairs

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## A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Subcontractor Equal Access to Bonding Act of 2013**

3 FOR the purpose of prohibiting a prime contractor from requiring certain bonding  
4 from a subcontractor on certain procurement contracts that is more stringent  
5 than certain bonding requirements for prime contractors on certain  
6 procurement contracts under a certain circumstance; requiring certain prime  
7 contractors and the State to be dual obligees on certain bonds under a certain  
8 circumstance; establishing certain underwriting requirements for certain bonds  
9 that are provided by subcontractors; requiring a subcontractor to provide  
10 certain evidence with a certain bond under certain circumstances; requiring a  
11 procurement officer to make a certain determination and to obtain advice from  
12 the Office of the Attorney General under certain circumstances; and generally  
13 relating to bonding requirements for subcontractors on procurement contracts  
14 with the State.

15 BY adding to

16 Article – State Finance and Procurement  
17 Section 13–227  
18 Annotated Code of Maryland  
19 (2009 Replacement Volume and 2012 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
21 MARYLAND, That the Laws of Maryland read as follows:

22 **Article – State Finance and Procurement**

23 **13–227.**

24 **(A) IF A PRIME CONTRACTOR REQUIRES A SUBCONTRACTOR TO**  
25 **PROVIDE A BID, PERFORMANCE, OR PAYMENT BOND ON A PROCUREMENT**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 CONTRACT FOR SERVICES, SUPPLIES, OR CONSTRUCTION-RELATED SERVICES  
2 WITH THE STATE:

3 (1) THE PRIME CONTRACTOR MAY NOT REQUIRE BID,  
4 PERFORMANCE, OR PAYMENT BONDING FROM A SUBCONTRACTOR THAT IS  
5 MORE STRINGENT THAN THE BONDING REQUIREMENTS IN §§ 13-207 AND  
6 13-216 OF THIS SUBTITLE AND § 17-104 OF THIS ARTICLE; AND

7 (2) THE PRIME CONTRACTOR AND THE STATE SHALL BE DUAL  
8 OBLIGEEES ON THE BOND.

9 (B) A BID, PERFORMANCE, OR PAYMENT BOND THAT IS PROVIDED BY A  
10 SUBCONTRACTOR UNDER SUBSECTION (A) OF THIS SECTION SHALL BE  
11 UNDERWRITTEN BY:

12 (1) A SURETY COMPANY AUTHORIZED TO DO BUSINESS IN THE  
13 STATE;

14 (2) AN INDIVIDUAL SURETY THAT MEETS THE REQUIREMENTS OF  
15 THIS SECTION; OR

16 (3) THE MARYLAND SMALL BUSINESS DEVELOPMENT  
17 FINANCING AUTHORITY ESTABLISHED IN TITLE 5, SUBTITLE 5 OF THE  
18 ECONOMIC DEVELOPMENT ARTICLE.

19 (C) IF A SUBCONTRACTOR ELECTS TO PROVIDE A BOND UNDERWRITTEN  
20 BY AN INDIVIDUAL SURETY IN ACCORDANCE WITH SUBSECTION (B)(2) OF THIS  
21 SECTION:

22 (1) THE SUBCONTRACTOR SHALL PROVIDE EVIDENCE WITH THE  
23 BOND THAT IS SATISFACTORY TO THE UNIT THAT:

24 (I) THE SUBCONTRACTOR HAS BEEN DENIED CREDIT BY A  
25 SURETY COMPANY WITHIN THE PAST 3 YEARS FROM THE DATE THE BOND WAS  
26 SUBMITTED, BASED ON A GOOD FAITH APPLICATION BY THE SUBCONTRACTOR;  
27 AND

28 (II) THE INDIVIDUAL SURETY TRANSACTS BUSINESS ONLY  
29 THROUGH AN INSURANCE AGENCY LICENSED BY THE MARYLAND INSURANCE  
30 ADMINISTRATION; AND

31 (2) THE PROCUREMENT OFFICER SHALL:

1                   **(I) DETERMINE THE ACCEPTABILITY OF AN INDIVIDUAL**  
2 **PROPOSED AS A SURETY AND ENSURE THAT THE SURETY'S PLEDGED ASSETS**  
3 **ARE SUFFICIENT TO COVER THE BOND REQUIRED BY THE SOLICITATION; AND**

4                   **(II) OBTAIN THE ADVICE OF THE OFFICE OF THE ATTORNEY**  
5 **GENERAL AS TO THE ADEQUACY OF THE DOCUMENTS PLEDGING THE ASSETS**  
6 **BEFORE ACCEPTING THE BOND.**

7           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
8   October 1, 2013.